

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION**

WSOU INVESTMENTS, LLC D/B/A
BRAZOS LICENSING AND DEVELOPMENT,

Plaintiff,

v.

HEWLETT PACKARD ENTERPRISE COMPANY,

Defendant.

Civil Action No. 6:20-cv-00728-ADA

JURY TRIAL DEMANDED

PUBLIC REDACTED VERSION

**BRAZOS’S SUR-REPLY IN OPPOSITION TO HPE’S MOTION TO DISMISS
FOR LACK OF SUBJECT MATTER JURISDICTION PURSUANT TO FRCP 12(B)(1) (DKT. 59)**

I. BRAZOS HAS ARTICLE III STANDING

A. Brazos [REDACTED] and the Assignment [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹ HPE expressly concedes that [REDACTED] is irrelevant. *See* Reply § I.C.

11/11/2019

[illegible]

(“[R]atification may be implied when a party fails to repudiate, or retains the benefit of, an unauthorized transaction when he knows of the material facts concerning the agreement. . . . Both void and voidable contracts and instruments may be ratified.”). *See* p. 2 above; Opp. at 3-4, 12-13; Ex. R ¶¶ 14-16, 19.³

³ Although HPE contends that [REDACTED] does not cure this standing issue (Reply at 4-5), Brazos argued only that it cures any prudential defect with respect to the right to recover past damages, *see* Opp. at 14-15, 20, which it does. *See* p. 5 below.

II. BRAZOS HAS STANDING TO SUE FOR PAST INFRINGEMENT OF THE ASSERTED PATENT

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] HPE's reply cites only the same authorities as its Motion, *see* Reply at 8; Mot. at 10, 13, which *support* this conclusion. *See also* Opp. at 16.

HPE's contention that Amended Schedule B1 should control (Reply at 9) is misguided.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] In any event, Amended Schedule B1 is *part* of the PPA, and the documents must be considered together. *See, e.g., Minco, Inc. v. Combustion Eng'g, Inc.*, 95 F.3d 1109, 1118 (Fed. Cir. 1996) (only some agreements in a series expressly assigned the right to past infringement, but "the entirety of the agreements establish[] that the MAC assignment clearly conveyed the right to sue for past infringement").

HPE's claim that the PPA is not [REDACTED] (Reply at 9) also fails. [REDACTED]

[REDACTED]

[REDACTED] Opp. at 17-18; *see, e.g., Speedplay, Inc. v. Bebop, Inc.*, 211 F.3d 1245, 1253 (Fed. Cir. 2000). As HPE admits, [REDACTED]

[REDACTED]

[REDACTED]

Finally, contrary to HPE's suggestion, which is unsupported by any citation to authority,

[REDACTED]

[REDACTED]

[REDACTED]

Any remaining doubt that Nokia explicitly transferred the right to sue for past damages in the PPA is obviated by the [REDACTED] ⁴

Last, HPE's contends, again incorrectly, [REDACTED]

[REDACTED] HPE misreads the document. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁴ This issue of one of prudential or statutory standing and thus may be cured, if necessary, after an action is filed. Opp. at 14-15. HPE's reply restates its position, but offers no controlling authority showing that the right to recover past damages implicates constitutional standing.

Respectfully submitted,

Dated: October 29, 2021

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CERTIFICATE OF SERVICE

I certify that the foregoing document was served upon all counsel of record via the Court's CM/ECF electronic filing system in accordance with the Federal Rules of Civil Procedure on October 29, 2021.

/s/ Raymond W. Mort, III

Raymond W. Mort, III

**UNITED STATES DISTRICT COURT
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WACO DIVISION**

WSOU INVESTMENTS, LLC D/B/A
BRAZOS LICENSING AND DEVELOPMENT,

Plaintiff,

v.

HEWLETT PACKARD ENTERPRISE COMPANY,

Defendant.

Civil Action Nos. 6:20-cv-00727-ADA
6:20-cv-00728-ADA
6:20-cv-00730-ADA

JURY TRIAL DEMANDED

**DECLARATION OF TIMOTHY J. ROUSSEAU IN SUPPORT OF
BRAZOS’S SUR-REPLY IN OPPOSITION TO HPE’S MOTION TO DISMISS
FOR LACK OF SUBJECT MATTER JURISDICTION PURSUANT TO FRCP 12(B)(1)**

I, Timothy J. Rousseau, declare as follows:

1. I am an attorney with Brown Rudnick LLP, counsel to plaintiff WSOU Investments, LLC d/b/a Brazos Licensing and Development (“Brazos”). I am a member of the bar of this Court. I submit this declaration in support of Brazos’s Sur-Reply in Opposition to Defendant Hewlett Packard Enterprise Company (“HPE”)’s Motion to Dismiss for Lack of Subject Matter Jurisdiction Pursuant to FRCP 12(b)(1). I have personal knowledge of the matters stated in this Declaration and would testify truthfully to them if called upon to do so.

2. Attached as Exhibit AA to Brazos’s Sur-Reply is a true and correct copy of the Declaration of Stuart A. Shanus, which was executed on October 29, 2021.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed on October 29, 2021 in New York, New York.

/s/ Timothy J. Rousseau

Timothy J. Rousseau

EXHIBIT AA
FILED UNDER SEAL